

AMENDMENTS TO LB 563

Introduced by Business and Labor.

1 1. Strike the original sections and insert the following
2 sections:

3 Section 1. Sections 1 to 12 of this act shall be known
4 and may be cited as the Employee Classification Act.

5 Sec. 2. For purposes of the Employee Classification Act:

6 (1) Commissioner means the Commissioner of Labor;

7 (2) Contractor means an individual, partnership, limited
8 liability company, corporation, or other business entity engaged
9 in a delivery service or a construction contractor business, as
10 construction and contractor are defined in section 48-2103;

11 (3) Delivery service means the transport and delivery of
12 goods, products, supplies, or raw materials upon the highways of
13 this state;

14 (4) Department means the Department of Labor; and

15 (5) Performing services means the performance of
16 construction labor or delivery services for remuneration.

17 Sec. 3. (1) An individual performing construction labor
18 services for a contractor is presumed an employee and not an
19 independent contractor for purposes of the Employee Classification
20 Act, unless:

21 (a) The individual meets the criteria found in
22 subdivision (5) of section 48-604;

23 (b) The individual has been registered as a contractor

1 pursuant to the Contractor Registration Act at least six months
2 prior to commencing construction work for the contractor; and

3 (c) The individual has been assigned a combined tax rate
4 pursuant to subdivision (4) of section 48-649 or the employees of
5 the individual are exempted from unemployment insurance coverage
6 pursuant to subdivision (6) of section 48-604.

7 (2) An individual performing delivery services for
8 a contractor is presumed an employee and not an independent
9 contractor for purposes of the Employee Classification Act, unless
10 the individual is exempted from unemployment insurance coverage
11 pursuant to subdivision (6) (n) or (6) (g) of section 48-604.

12 (3) The act shall not be construed to affect or apply
13 to a common-law or statutory action providing for recovery in tort
14 and shall not be construed to affect or change the common-law
15 interpretation of independent contractor status as it relates to
16 tort liability or a workers' compensation claim.

17 Sec. 4. It is a violation of the Employee Classification
18 Act for a contractor to designate an individual as an independent
19 contractor who would be properly classified as an employee under
20 section 3 of this act.

21 Sec. 5. The department shall establish and operate a
22 hotline and web site for individuals to report suspected violations
23 of the Employee Classification Act. The hotline and web site
24 may be operated in conjunction with the requirements of the
25 Contractor Registration Act. At a minimum, the department shall
26 require the reporting individual to provide contact information and
27 a description of the suspected violation including the name of

1 the business and jobsite location. The department shall keep the
2 identity of the reporting individual confidential.

3 Sec. 6. The department shall timely investigate all
4 credible reports made pursuant to section 5 of this act.

5 Sec. 7. In addition to any other fines or penalties
6 provided by law, any contractor who violates the Employee
7 Classification Act shall be assessed, by the commissioner, a five
8 hundred dollar fine per each misclassified individual for the first
9 offense and a five thousand dollar fine per each misclassified
10 individual for each second and subsequent offense.

11 Sec. 8. Upon finding a contractor has violated the
12 Employee Classification Act, the commissioner shall instigate
13 proceedings pursuant to the Employment Security Law to collect
14 any unpaid combined taxes and interest. The commissioner shall
15 share any findings with the Department of Revenue for analysis
16 of violations of the Nebraska Revenue Act of 1967. Upon receipt,
17 the Department of Revenue shall promptly investigate and proceed
18 with the collection of income tax not withheld plus interest
19 and penalties. The commissioner and Department of Revenue shall
20 refer their findings to the appropriate prosecuting authority for
21 appropriate criminal prosecution under the Employment Security
22 Law, the Nebraska Revenue Act of 1967, or the Nebraska Workers'
23 Compensation Act.

24 Sec. 9. The department shall annually provide a report to
25 the Legislature regarding compliance with and enforcement of the
26 Employee Classification Act. The report shall include, but not be
27 limited to, the number of reports received from both its hotline

1 and web site, the number of investigated reports, the findings
2 of the reports, the amount of combined tax, interest, and fines
3 collected, the number of referrals to the Department of Revenue
4 and appropriate prosecuting authority, and the outcome of such
5 referrals.

6 Sec. 10. Every contractor shall post in a conspicuous
7 place at the job site or place of business in English and Spanish
8 the following notice:

9 (1) Every individual working for a contractor has the
10 right to be properly classified by the contractor as an employee
11 rather than an independent contractor if the individual does not
12 meet the requirements of an independent contractor under the law
13 known as the Employee Classification Act.

14 (2) If you believe you or someone else has not been
15 properly classified as an employee or an independent contractor
16 under the Employee Classification Act, contact the Department of
17 Labor.

18 Sec. 11. The state or any political subdivision entering
19 into a contract for construction shall require that each contractor
20 who performs construction services pursuant to the contract submit
21 an affidavit attesting that each individual performing services
22 for such contractor is properly classified under the Employee
23 Classification Act, such contractor has completed a federal
24 I-9 immigration form on file for each individual performing
25 services, such contractor has complied with section 4-114, and such
26 contractor has no reasonable basis to believe that such individual
27 is an undocumented worker.

1 Sec. 12. Any contractor who knowingly provides a false
2 affidavit under section 11 of this act to the state or political
3 subdivision shall be subject to the penalties of perjury and upon a
4 second or subsequent violation shall not be permitted to contract
5 with the state or any political subdivision for a period of three
6 years after the date of discovery of the falsehood.

7 Sec. 13. Section 48-621, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 48-621 (1) The administrative fund shall consist of the
10 Employment Security Administration Fund and the Employment Security
11 Special Contingent Fund. Each fund shall be maintained as a
12 separate and distinct account in all respects, as follows:

13 (a) There is hereby created in the state treasury a
14 special fund to be known as the Employment Security Administration
15 Fund. All money credited to this fund is hereby appropriated and
16 made available to the Commissioner of Labor. All money in this
17 fund shall be expended solely for the purposes and in the amounts
18 found necessary as defined by the specific federal programs, state
19 statutes, and contract obligations for the proper and efficient
20 administration of all programs of the Department of Labor. The
21 fund shall consist of all money appropriated by this state and
22 all money received from the United States of America or any
23 agency thereof, including the Department of Labor and the Railroad
24 Retirement Board, or from any other source for such purpose.
25 Money received from any agency of the United States or any other
26 state as compensation for services or facilities supplied to
27 such agency, any amounts received pursuant to any surety bond or

1 insurance policy for losses sustained by the Employment Security
2 Administration Fund or by reason of damage to equipment or supplies
3 purchased from money in such fund, and any proceeds realized from
4 the sale or disposition of any equipment or supplies which may no
5 longer be necessary for the proper administration of such programs
6 shall also be credited to this fund. All money in this fund
7 shall be deposited, administered, and disbursed in the same manner
8 and under the same conditions and requirements as is provided by
9 law for other special funds in the state treasury. Any balances
10 in this fund, except balances of money therein appropriated from
11 the General Fund of this state, shall not lapse at any time but
12 shall be continuously available to the commissioner for expenditure
13 consistent with the Employment Security Law. Any money in the
14 Employment Security Administration Fund available for investment
15 shall be invested by the state investment officer pursuant to
16 the Nebraska Capital Expansion Act and the Nebraska State Funds
17 Investment Act; and

18 (b) There is hereby created in the state treasury a
19 special fund to be known as the Employment Security Special
20 Contingent Fund. Any money in the Employment Security Special
21 Contingent Fund available for investment shall be invested by
22 the state investment officer pursuant to the Nebraska Capital
23 Expansion Act and the Nebraska State Funds Investment Act. All
24 money collected under section 48-655 as interest on delinquent
25 contributions, less refunds, shall be credited to this fund from
26 the clearing account of the Unemployment Compensation Fund at the
27 end of each calendar quarter. Such money shall not be expended

1 or available for expenditure in any manner which would permit its
2 substitution for or a corresponding reduction in federal funds
3 which would in the absence of such money be available to finance
4 expenditures for the administration of the unemployment insurance
5 law, but nothing in this section shall prevent the money from being
6 used as a revolving fund to cover expenditures necessary and proper
7 under the law for which federal funds have been duly requested
8 but not yet received, subject to the charging of such expenditures
9 against such federal funds when received. The money in this fund
10 may be used by the Commissioner of Labor only as follows:

11 (i) To replace within a reasonable time any money
12 received by this state pursuant to section 302 of the federal
13 Social Security Act, as amended, and required to be paid under
14 section 48-622;

15 (ii) To meet special extraordinary and contingent
16 expenses which are deemed essential for good administration but
17 which are not provided in grants from the Secretary of Labor of the
18 United States and, for this purpose, no expenditures shall be made
19 from this fund except on written authorization by the Governor at
20 the request of the Commissioner of Labor;

21 (iii) To be transferred to the Nebraska Community College
22 Aid Cash Fund; ~~and~~

23 (iv) To be transferred to the Job Training Cash Fund;
24 and-

25 (v) To assist with enforcement of the Employee
26 Classification Act.

27 (2) (a) Money credited to the account of this state in

1 the Unemployment Trust Fund by the United States Secretary of the
2 Treasury pursuant to section 903 of the Social Security Act may
3 not be requisitioned from this state's account or used except for
4 the payment of benefits and for the payment of expenses incurred
5 for the administration of the Employment Security Law and public
6 employment offices. Such money may be requisitioned pursuant to
7 section 48-619 for the payment of benefits. Such money may also
8 be requisitioned and used for the payment of expenses incurred
9 for the administration of the Employment Security Law and public
10 employment offices but only pursuant to a specific appropriation
11 by the Legislature and only if the expenses are incurred and
12 the money is requisitioned after the date of enactment of an
13 appropriation law which specifies the purposes for which such
14 money is appropriated and the amounts appropriated therefor. Such
15 appropriation is subject to the following conditions:

16 (i) The period within which such money may be obligated
17 is limited to a period ending not more than two years after the
18 effective date of the appropriation law; and

19 (ii) The amount which may be obligated is limited to an
20 amount which does not exceed the amount by which the aggregate of
21 the amounts transferred to the account of this state pursuant to
22 section 903 of the Social Security Act exceeds the aggregate of the
23 amounts used by this state pursuant to the Employment Security Law
24 and charged against the amounts transferred to the account of this
25 state.

26 (b) For purposes of subdivision (2)(a)(ii) of this
27 section, the amounts obligated under an appropriation for the

1 administrative purposes described in such subdivision shall
2 be charged against transferred amounts at the exact time the
3 obligation is entered into.

4 (c) The appropriation, obligation, and expenditure or
5 other disposition of money appropriated under this subsection shall
6 be accounted for in accordance with standards established by the
7 United States Secretary of Labor.

8 (d) Money appropriated as provided in this subsection for
9 the payment of expenses of administration shall be requisitioned
10 as needed for the payment of obligations incurred under such
11 appropriation and, upon requisition, shall be credited to the
12 Employment Security Administration Fund from which such payments
13 shall be made. Money so credited shall, until expended, remain
14 a part of the Employment Security Administration Fund and, if it
15 will not be immediately expended, shall be returned promptly to the
16 account of this state in the Unemployment Trust Fund.

17 (e) Notwithstanding subdivision (2)(a) of this section,
18 money credited with respect to federal fiscal years 1999,
19 2000, and 2001 shall be used solely for the administration of
20 the unemployment compensation program and are not subject to
21 appropriation by the Legislature.

22 (3) There is hereby appropriated out of the funds made
23 available to this state in federal fiscal year 2002 under section
24 903(d) of the federal Social Security Act, as amended, the sum
25 of \$6,800,484, or so much thereof as may be necessary, to be
26 used, under the direction of the Department of Labor, for the
27 administration of the Employment Security Law and public employment

1 offices. The expenditure or other disposition of money appropriated
2 under this subsection shall be accounted for in accordance with
3 standards established by the United States Secretary of Labor.
4 Reed Act distributions appropriated pursuant to this subsection
5 may be amortized with federal grant funds provided pursuant to
6 Title III of the federal Social Security Act and the federal
7 Wagner-Peyser Act for the purpose of administering the state
8 unemployment compensation and employment service programs to the
9 extent allowed under such acts and the regulations adopted pursuant
10 thereto. Except as specifically provided in this subsection, all
11 provisions of subsection (2) of this section, except subdivision
12 (2)(a)(i) of this section, shall apply to this appropriation.
13 The commissioner shall submit an annual report to the Governor,
14 the Speaker of the Legislature, and the chairpersons of the
15 Appropriations Committee and the Business and Labor Committee
16 of the Legislature describing expenditures made pursuant to this
17 subsection.

18 Sec. 14. Original section 48-621, Reissue Revised
19 Statutes of Nebraska, is repealed.